



File Code: 5430
Route 1580, 6500
To:

Date: July 26, 1999

Subject: Sharing Processing Costs and Responsibilities in Land Exchanges

To: Regional Foresters

The purpose of this letter is to outline appropriate procedures for managing costs associated with land exchanges. Authorized officers shall execute an Agreement to Initiate (ATI) for all agreed upon exchanges of land or exchanges of interests in land, in accordance with Title 36, Code of Federal Regulations (CFR), part 254 (36 CFR 254). Each ATI must include an assignment of responsibility for performance of required functions and for costs associated with processing the exchange. The ATI, pursuant to 36 CFR 254.4 (7), must also include a statement specifying whether compensation for costs assumed by parties to an exchange will be allowed. The following criteria is provided to improve implementation and use of the ATI.

When Assumption of Costs is applicable for consideration:

The Assumption of Costs provision is outlined in 36 CFR 254.7. In negotiating an ATI, it is inappropriate to initially authorize the use of the Assumption of Costs provision. This provision should only come into play if a party to a land exchange cannot subsequently fulfill their agreed to responsibilities as initially identified in the ATI; due to some unexpected circumstance(s). If either party cannot fulfill its assigned responsibilities during the case processing, the first recourse should be for the other party to assume this responsibility and costs without subsequent compensation. If this is not workable, action on most cases should be deferred until funding is available, or the case should be abandoned. However, if the circumstances of the exchange meet **all** requirements of 36 CFR 254.7, then it would be appropriate to request Washington Office (WO) approval for the use of Assumption of Costs. Only following approval of a request to use the Assumption of Costs provision should the initial ATI be amended. Assumption of Costs should only be considered when there are no other practicable means available for managing costs associated with responsibilities assigned to a party to a land exchange. If authorized, Assumption of Costs does not provide for payments during the exchange process. Rather, costs to be assumed are carried as a credit which is liquidated during completion of land exchange closing activities by administratively adjusting relative values through the use of cash equalization procedures.

Sharing in the cost and responsibilities associated with land exchanges:

It is desirable, when negotiating costs and responsibilities as part of the ATI, for each party to share costs by providing complete coverage of the tasks involved rather than sharing in the costs of individual tasks, i.e., one party provide 100 percent of the cultural resource work, and one party provide 100 percent of any needed survey in total rather than sharing the costs of each.



This is the simplest means of sharing and should be based on best cost estimates with no subsequent adjustments for any cost overruns.

The 36 CFR 254 identifies the authority under which units may complete all necessary reviews, studies, appraisals, and other work to process and complete land exchanges. Acting in accordance with these regulations, units should prepare the mandatory ATI to document provisions and understandings for how the work will be done in order to process the exchange proposal. These provisions and understandings can be summarized in an exhibit which is made part of the ATI. Each ATI should include, or be subsequently modified to include, sufficient language to support the Agency's receipt of funds from the other party to the ATI. With adequate documentation supporting the ATI, no further collection agreements are needed. Challenge cost share agreements are not appropriate for use in completing land exchanges. The executed ATI can suffice as the sole basis for the Forest Service (FS) to collect funds or make payments.

If we agree to share in the costs of completing a specific report or study, the arrangement needs to be adequately documented in the ATI. Example: If we agree that each party will share 50 percent of the cost of the appraisals, this 50/50 arrangement must be shown in the ATI. The ATI must also define who will be responsible for contracting for these needed reports. Further, the ATI needs to outline how payments will be made and to whom. We can either make payments or collect funds under the ATI for contracted reports or studies that are needed to process land exchanges. Funding for payments made to non-Federal parties under these types of agreements must come from each Region's administrative funds. Cash equalization funding is authorized only for Assumption of Costs pursuant to 36 CFR 254.7. We should not agree to pay the non-Federal party for non-contractual work which is to be preformed by the non-Federal party.

In one scenario, we contract for the needed report(s) and then collect funds from the non-Federal party for their share of the costs. The non-Federal party's share of costs may include costs associated with the FS review of reports. If documented in the ATI, this can be done by sending a bill for collection to the non-Federal party for their share of the costs. The FS then would contract for the needed report(s) following normal contracting procedures. Once these reports have been received, reviewed, and accepted, the FS then can make the full payment to the contractor under regular payment procedures. In the ATI, insert one of the following statements on overhead costs: (1) overhead at the rate of (%) will be assessed; or (2) overhead will not be assessed on monies received from the non-Federal parties.

In another scenario the non-Federal party will contract for the needed report(s) and bill the FS for our share of the costs after the report(s) are accepted. The FS would not make advance or partial payments. The FS would only pay final costs for acceptable services that are reasonable and accurately reflect the value of the goods or services provided. If this scenario is selected, it is important that the ATI include documentation of FS requirements for determining an acceptable product or service. The ATI should also document the requirement for simultaneous disclosure of appraisal reports to both the FS and the non-Federal party and require that the non-Federal party not release any report/appraisal to the public until it has been approved and a final decision on the proposal has been made by the FS. Further, the ATI should specify that appraisal reports prepared by fee appraisers under contract to the non-Federal party and subsequently submitted to

the FS for review, shall become the property of the United States and may be used by the FS for any legal and proper purpose. The FS should participate with the non-Federal party in the screening and selection of contractors. In addition, the FS should provide information and explain requirements to contractors at pre-work meetings of the necessary standards to be met. However, the FS should avoid being in the role of directing the contractor or making payment directly to the non-Federal party's contractor as reports are received and accepted.

Deed provisions as means of equalizing land values or completing Federal exchange processing responsibilities:

Deed restrictions on Federal lands being conveyed should only be used when necessary to comply with law, regulation, executive order, or management objectives included within national forest land management plans. It is inappropriate for either party to include deed conditions as the means of equalizing land values or accomplishing exchange processing responsibilities.

Please contact Mike Williams at (202) 205-1347, if there are any questions.

/s/ Jack L. Craven

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/s/ Rico L. Clarke

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